

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/900,319 07/06/01 TRAMONTANA

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027777 HM12/1024
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EXAMINER

DELACROIX MUIRHEI, C

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

10/24/01

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/900,319	Applicant(s) TRAMONTANA
Examiner Cybille Delacroix-Muirheid	Art Unit 1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jul 6, 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 6-11 and 19-23 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 6-11 and 19-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

DETAILED ACTION

The following is responsive to the Preliminary Amendment received July 6, 2001.

Claims 1-5 and 12-18 are cancelled. New claims 19-23 are added. Claims 6-11 and 19-23 are currently pending.

Priority

1. If applicant desires priority under 35 U.S.C. 119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph.

Specification

2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and **should include that which is new in the art to which the invention pertains**. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

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- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

PLEASE NOTE The abstract should be commensurate in scope with the disclosure in that it should recite the essential oils as being the additive that is added to provide aroma and antimicrobial activity.

Claim Objections

3. Claims 10 and 20 are objected to because of the following informalities: in claim 10, line 2, before "effective", the "and" should be deleted and replaced with --an--. In claim 20, line 3, "(hinoki)" should be deleted. Appropriate correction is required.

4. Claims 6 and 23 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 6 and 23 recite method steps. These limitations, however fail to further limit the structural or physical characteristics of the claimed article.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Ginocchio, 4,237,591.

Ginocchio discloses sanitary napkins provided with a liquid perfume composition which comprises essential oils, solvents and other additives. Please see col. 2, lines 39-41.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 19-23 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginocchio, supra in view of Engle 3,819,405 and Hooper et al., 4,343,783.

Ginocchio as applied above.

Ginocchio does not, however, specifically disclose Applicant's claimed essential oils (claim 20); however, the Examiner refers to (1) Engle, which discloses impregnating sanitary napkins with essential oils such as cedar oil so as to provide a pleasant fragrance (please see col. 7, lines 15-32; col. 3, lines 26-32); and (2) Hooper et al., which discloses deodorant disposable porous articles, such as sanitary napkins and their covers, wherein these napkins and covers are impregnated with essential oils comprising clove leaf oil, thyme oil and cedar atlas oil. Please see the abstract; col. 10, line 62; col. 11, lines 15-30 and Deodorant Composition 1; col. 1, lines 40-54; col. 8, line 38 and 43.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sanitary napkin of Ginocchio by impregnating the napkin with essential oils like cedar oil, thyme oil or clove oil as taught by Engle and Hooper because one of ordinary skill in the art would reasonably expect the resulting sanitary napkins to suppress or eliminate any malodors associated with the use of a sanitary napkin.

With respect to the claimed concentration of essential oils, since pleasant aromas are often associated with the amount of essential oil present, it would have been obvious to one of ordinary skill in the art to further modify the sanitary napkins of the prior art to provide a concentration of essential oils sufficient to eliminate odors.

In addressing the use of rosemary oil, absent evidence to the contrary, use of a conventionally known oil such as rosemary oil would have been obvious and well within the capability of the skilled artisan.

Finally, absent evidence to the contrary, determining the location where the essential oil is contained in the sanitary napkin is obvious and well within the capability of the skilled artisan. One of ordinary skill in the art would be motivated to place the essential oils in an area that would provide for optimum elimination of malodorous substances.

Conclusion

Claims 6-11 and 19-23 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

CDM
CDM
Oct. 22, 2001

Cybille Delacroix-Muirheid
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Patent Examiner Group 1600